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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[07 June 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Democratic Republic of the Congo: International Commission of Inquiry needed to ensure justice, truth and reparation for human rights violations and abuses in the Kasai region

Violent conflict in the Kasai region of the Democratic Republic of the Congo (DRC), which has forced 1.3 million[1] people to flee their homes, requires urgent and immediate action from the UN Human Rights Council ('the Council'). Hundreds of extrajudicial executions (EJEs) and other crimes under international law committed by the Armed Forces of the Democratic Republic of the Congo (FARDC) have contributed to a conflict now affecting eight provinces in which an estimated 500 to 1,000 people have been killed.

Despite promises made by the DRC government[2], national investigations into these human rights violations and abuses, including 42 mass graves confirmed by the UN[3], have not been initiated or proven credible. Given the lack of credible investigations by Congolese authorities, Amnesty International urges the UN Human Rights Council to establish an international Commission of Inquiry, or similar investigative mechanism, into the situation in the central Kasai region during the 35th session of the Council.

Lack of credible investigations at the national level

Amnesty International visited Kinshasa between 15 and 20 May 2017 and met with the Office of the Military Prosecutor General (MPG), the Minister of Justice, the Minister for Human Rights, UN officials, a range of diplomatic missions and humanitarian workers.

Based on information gathered, Amnesty International found that concrete investigations had only been initiated in relation to two incidents. Both investigations have been closed by the MPG and transferred to the Kananga Garrison Military Court and the Military Court of Mbuji Mayi for trial. These military courts should not exercise jurisdiction over crimes under international law or human rights violations, and appear unable to provide justice to victims. Neither investigation was transparent nor credible. Investigations into these two incidents alone do not respond to the large scale of violations documented by the UN Joint Human Rights Office (UNJHRO).

Consequently, Amnesty International believes that an international investigation is urgently needed to ensure accountability and deter further human rights violations and abuses.

Incidents that require investigation

Amnesty International research has highlighted a number of incidents that would benefit from an independent, international investigation, including:

The killing of Jean-Pierre Mpandi on 12 August 2016

Jean-Pierre Mpandi, who claimed the hereditary title of Kamuena Nsapu, was killed following clashes between security forces and rebel fighters in August 2016. Following this, the UN reported on human rights abuses by "local militia" under the command of customary chiefs, as well as human rights violations by security forces, particularly the FARDC, including EJEs, arbitrary arrests, incommunicado detention and cruel, inhumane or degrading treatment of several "civilians suspected of collaborating with the militia" between August and September 2016.[4]

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[1] UNOCHA, DRC: Situation Report n.6, 12 May 2017, http://reliefweb.int/report/democratic-republic-congo/urgence-complexe-dans-la-r-gion-du-kasa-rd-congo-rapport-de.

[2] Human Rights Council discusses the situation of human rights in the Democratic Republic of the Congo and in Sri Lanka, 22 March 2017, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21432&LangID=E.

[3] OHCHR, DRC: Further mass graves and killings discovered in Kasais, says Zeid, 19 April 2017, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21511&LangID=E#sthash.ssd3qXDu.dpuf , Interview with UNJHRO, 18 May 2017.

[4] UNHJRO, Analysis of the human rights situation in October 2016.

The death of Jean-Pierre Mpandi sparked an increase in violence in the region. The MPG and the magistrate with territorial jurisdiction over Mpandi's killing both confirmed to Amnesty International that the military has not opened a judicial investigation into this incident.

EJEs in Mwanza Lomba

On 17 February 2017, a video leaked online showed soldiers executing seemingly unarmed Kamuena Nsapu followers. Initially, the DRC government spokesperson denied the video was filmed in the DRC and called it a "montage aimed at undermining the reputation of DRC's security forces."[5] Following statements by the UN, the US, the European Union and France, the MPG opened an investigation. On 19 May 2017, the MPG declared the investigation closed and transferred the file to the military court in Kasai Oriental. Seven FARDC soldiers were charged with the war crimes of murder, mutilation, inhuman treatment, as well as refusal to denounce an offence.

During the investigation, the MPG announced that it had uncovered graves linked to these EJEs.[6] The MPG indicated the need for technical expertise from the UN to investigate the graves and identify the victims. However, the Military Prosecution exhumed the graves without the UN present and concluded they were individual graves of Kamuena Nsapu fighters who died during armed confrontations. They have not shared any information about the identities or the causes of death of the bodies exhumed.

Massacres and mass graves

Between December 2016 and March 2017, the UNJHRO documented hundreds of EJEs and 42 mass graves. To date, the following massacres have yet to be investigated:

- On 10 February 2017, during an operation in Tshimbulu, the FARDC killed at least 40 presumed members of the Kamuena Nsapu, mostly unarmed or armed with machetes and knifes.[7]

- On 14 March 2016, at least 39 people, including at least 11 minors, were killed by soldiers of the 2101st FARDC Regiment, and elements of the Congolese Légion nationale d'intervention (LENI), during an operation against individuals allegedly linked to the Kamuena Nsapu "militia" in the Nganza and Ndesha neighbourhoods of Kananga.[8]

- Between 28 and 30 March 2017, the FARDC conducted a door-to-door operation in search of presumed Kamuena Nsapu members in the Nzanga neighbourhood of Kananga. At least 50 people, including 15 women and 12 children, were killed by FARDC soldiers, most of them shot in their homes. Three women and two girls were raped by FARDC soldiers during the operation.[9]

There have been no investigations into the mass graves. The lack of measures taken to secure the sites means that evidence of human rights violations and abuses might be tampered with.

Killing of the two UN experts and disappearances of their four Congolese colleagues

On 19 May 2017, the MPG announced the closure of investigations into the killings of the two UN experts, Michael Sharp and Zaida Catalan. Following conversations with different magistrates involved in these investigations, it seems that crucial information is missing in the military prosecution dossiers, undermining the credibility of the forthcoming trial.

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[5] The New York Times, *'Look, They Are Dying': Video Appears to Show Massacre by Congolese Soldiers*, 17 February 2017, https://www.nytimes.com/2017/02/17/world/africa/democratic-republic-congo-massacre-video-.html?mwrsm=WhatsApp&_r=2.

[6] Press conference by Military Prosecutor General, Kinshasa, 18 March 2017 (transcript on record). Radio France Internationale, *Massacre de Mwanza Lomba en RDC: la justice militaire arrete sept soldats*, 18 March 2017 http://www.rfi.fr/afrique/20170318-rdc-arrestation-militaires-affaire-video-execution-kamuina-nsapu

[7] UNHJRO, Analysis of the human rights situation in February 2017.

[8] UNHJRO, Analysis of the human rights situation in April 2017.

[9] Ibid.

Amnesty International is concerned about the decision to separate the investigation of the killing of the two UN experts from the investigation of the disappearance of their Congolese translator and three drivers. While the MPG said investigations into the disappearances of the four Congolese continue, magistrates told Amnesty International on 16 May, more than two months after their disappearances, that they had still not established the identity of the three drivers.

Amnesty International is also concerned by inconsistent reports from different government officials. On 10 April 2017, the Government Spokesperson told Amnesty International that the body of Betu Tshintela was found together with those of the experts and identified by his family. This information was subsequently denied by the MPG. To date, the fate and whereabouts of the four is unknown and it is unclear whether the same perpetrators were responsible. This raises concerns about justice for the four Congolese and demonstrates a gap in investigations regarding the killing of the two UN experts.

The MPG decided to start the trial while 14 of 16 alleged suspects are still at large. The Minister of Justice told Amnesty International that "they had located the others, but wanted to wait to arrest them, to avoid causing too much damage." Similarly, the MPG said during a press conference on 20 May 2017 that it knew the location of the person in possession of Zaida Catalan's head.

Amnesty International regrets the decision of the government, in collaboration with the MPG, to show the video of the killings of the two UN experts to the diplomatic community and media in Kinshasa. This recording constitutes evidence in an ongoing investigation and should not have been made public, as doing so could harm the investigation and traumatise the victims' families. Amnesty International has also received varying accounts of how the video was obtained.

Recommendation to the UN Human Rights Council

In light of the above concerns, Amnesty International strongly urges the UN Human Rights Council to establish a Commission of Inquiry, or a similar investigative mechanism, into crimes under international law and other human rights violations and abuses in the Kasai region. An independent international investigation that is well-resourced is crucial to bring justice to the victims and end the spiral of violence.